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SEP 20 2010
OFFICE OF PETITIONS

In re Application of :
Gordon G. Guay :
Application No. 10/664,818 : DECISION ON REQUEST FOR REFUND
Filed: September 16, 2003 :
Attorney Docket No. 08935-298001 / M-5032 :

This is a decision on the Request for Refund filed February 18, 2010.

The request is **DISMISSED**.

A Notice of appeal was filed on February 17, 2010, in the instant application. Petitioner now files the above request for refund in the amount of \$540.00, and states that "[t]he charge to the Deposit Account was made in error and accordingly, applicant respectfully requests that the amount be refunded to Fish & Richardson's Deposit Account No. 06-1050, referencing attorney docket no. 08935-298001, as a credit."

Petitioner is encouraged to note MPEP 607.02 which states:

Under 35 U.S.C. 42(d) and 37 CFR 1.26, the Office may refund: (1) a fee paid by mistake (e.g., fee paid when no fee is required); or (2) any fee paid in excess of the amount of fee that is required. See *Ex parte Grady*, 59 USPQ 276, 277 (Comm'r Pat. 1943) (the statutory authorization for the refund of fees under the "by mistake" clause is applicable only to a mistake relating to the fee payment).

When an applicant or patentee takes an action "by mistake" (e.g., files an application or maintains a patent in force "by mistake"), the submission of fees required to take that action (e.g., a filing fee submitted with such application or a maintenance fee submitted for such patent) is **not** a "fee paid by mistake" within the meaning of 35 U.S.C. 42(d).

In the instant petition, petitioner has stated, "[o]n or about February 18, 2010, Applicants paid **the required fee** of \$540.00 for a Notice of Appeal by way of Deposit Account" (emphasis added). Assuming *arguendo* that the Notice of Appeal was filed "by mistake", the submission of fee therewith, as also noted in the instant request, is "required" to take that action i.e., filing of Notice of Appeal. As such, the Notice of Appeal fee cannot be refunded.

In regard to petitioner's argument that "[t]he charge to the Deposit Account was made in error", it is noted that, in the Notice of Appeal filed February 18, 2010, petitioner stated, "[p]lease apply the \$540.00 appeal fee and any other charges or credits to Deposit Account No. 06-1050, referencing attorney docket no. 08935-392002." In view of the explicit authorization given to the Office as noted above, the charge to the Deposit account was not made in error.

In view of the above, the request for refund is dismissed as neither the fees were not paid "by mistake" nor "[t]he charge to the Deposit Account was made in error".

Further correspondence with respect to this matter should be addressed as follows:

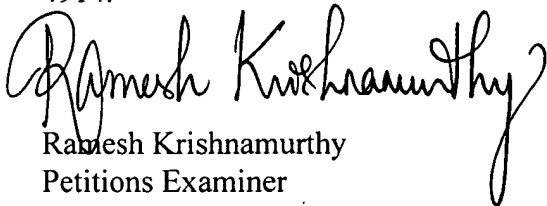
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The centralized facsimile number is (571) 273-8300.

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-4914.



Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

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